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In the Supreme Court of the United States

OCTOBER TERM, 1973

ALMA F. ANDERSON, DIANA BARCLAY, BETTY JEAN B. NEILSEN and PARKER M. NIELSON,

Petitioners,

vs.

SALT LAKE CITY CORPORATION and SALT LAKE COUNTY, UTAH,

Respondents.

BRIEF IN OPPOSITION TO PETITIONERS' PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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Respondent, Salt Lake City Corporation, Defendant and Appellant in the courts below, prays that a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case be denied Petitioners, Alma F. Anderson, et al.

OPINIONS BELOW

The original opinion of Judge Willis W. Ritter, Chief Judge of the United States District Court for the District of Utah was filed September 16, 1972. On October 2, 1972, a substantially revised version of Judge Ritter's opinion was filed and is now reported at 348 F. Supp. 1170. Judge Ritter's original opinion and resion of his original opinion were made after briefs were filed and oral arguments presented to the U.S. Court of Appeals for the Tenth Circuit. The opinion of the Court of Appeals is reported at 475 F.2d 29, and is set forth beginning at Page 1a of the Appendix hereto.

JURISDICTION

Respondent Salt Lake City Corporation accepts Petitioners' jurisdictional statement.

QUESTIONS PRESENTED

I.

1. Whether an admininstrative act of Salt Lake City Corporation, without adopting any ordinance on the part of the Board of City Commissioners, can constitute the enactment of a law which abridges that part of Amendment I of the Constitution which states:

> "Congress shall make no *law* respecting an establishment of religion . . ." (Emphasis Added)

2. Whether the erection on public property of a stone monolith donated by a fraternal organization for the avowed purpose of youth guidance and in recognition of prior law bearing a version of the Ten Command-

ments compiled after consultation with "all religions" and other symbols having solely secular and others having both secular and religious significance, constitutes an establishment of religion.

3. Whether the Court of Appeals improperly overruled the District Court's determination that the purpose and primary effect of Respondent Salt Lake City's allowing the erection of the monolith bearing a version of the Decalogue and symbols having solely secular and others having both secular and religious significance on public property in violation of the First Amendment respecting the establishment of religion.

CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

Respondent Salt Lake City Corporation accepts the statement of Petitioner concerning the constitutional provisions and rule involved.

STATEMENT

This is an action to enjoin Salt Lake City and Salt Lake County from accepting as a gift, and maintaining it on their joint property, a stone monolith bearing one version, not found in any so-called scripture, of the Ten Commandments compiled by the Fraternal Order of Eagles, and also bearing symbols having only secular significance and other symbols having both religious and secular significance.

The monolith was placed on public property, facing west and located three feet east and centered along

the eastern edge of a stone and concrete walkway 44 feet wide and 176 feet long, running north and south, with three benchs evenly spaced along each side, one of which is located in front of the monolith. The walkway leads from the street to the front entrance of the City and County Courts Building. The monolith is maintained and lighted by a single light at public expense. The monolith is approximately three feet wide and five feet high including the base. Persons attending State trials and entering the Courts Building from the north would pass by the monolith on the wide walkway, which is not the only entrance to the building, and are in no way forced to view the monolith and could very readily pass without even seeing the monolith.

The Board of Commissioners of Salt Lake City and Salt Lake County allowed, solely as an administrative function and without formal action, the erection of the monolith on public property by the Fraternal Order of Eagles. The only formal action taken by the City and County was their authorization to erect, on a light standard already in existence, a single spotlight directed toward the monolith which operates at the same time other lights in the area are on.

So far as the content of the inscriptions on the monolith is concerned, the last seven of the Ten Commandments, at least, have been recognized, even by one of the Plaintiffs, as having significance as "at least a precedent legal code," (Transcript P. 32, 33) and the evidence indicated that the inscription on the monolith of a pyramid shaped structure with an eye at the top had significance, both secular and religious, in that among other places it is found as part of the great seal of the United States

and on the dollar bill as well as being recognized as an old religious symbol. The Star of David has been used as a design on clothing and buildings for ornamentation and is also revered by the Jews as a symbol of their religion. The Chi-Rho, the first Greek letters of Christ's name also has significance as the sign of peace. The other symbols on the monolith, such as the symbol for the Fraternal Order of Eagles which is essentially the same symbol as that used by the United States, admittedly have no religious significance.

In reversing the judgment of the District Court, the three Justices of the Court of Appeals re-stated the findings of Judge Willis Ritter; namely, that the message displayed by the monolith was clearly religious in character and that the purpose and primary effect of the monolith was the advancement of religion by the City and County, and then unanimously stated, "we cannot agree" (App. Page 14). They then reversed the judgment in compliance with the requirements of Rule 52 (a), Federal Rules of Civil Procedure.

REASONS FOR REFUSING THE WRIT

I.

THE WRIT SHOULD NOT BE GRANTED BECAUSE THE DECISION OF THE COURT OF APPEALS DOES NOT EMASCULATE THIS COURT'S PRIOR RULINGS ON STATE ACTIONS INVOLVING RELIGION, IT IMPLEMENTS THEM.

The Court of Appeals extensively examined the Supreme Court's rulings in this area of the law and fairly stated the test in cases of this type.

They also correctly interpreted this body of law at App. 17 when they stated:

> "In applying this test, we must strike a balance between that which is primarily religious and that which is a primarily secular, albeit embodying some religious impact."

The Petitioners seem upset and allege that the Justices of the Court of Appeals found, in Petitioners' words, or allowed situations where "state support of or relation to religion in some degree may be sanctioned, if any reasonable amount of secular purpose can be found in association with an admittedly religious document." (Petitioners' Brief, Page 5.) This, needless to say was not their finding. But in support of what they did find, neither *Everson*, the case most strongly relied on by Petitioners, nor any of the other cases cited in Petitioners' Brief require that everything having any religious significance be proscribed, but rather recognized, as in *Zorach v. Clauson*, 343 U.S. 306, 313, (1952), *Lemon v. Kurtsman*, 403 U.S. 602, 614 (1971) and *Abington School District v. Schemp*, 374 U.S. 203, 294-295 (1963), that many things accepted in our society and which constitute an inseparable part of legal and secular functions have a religious origin, such as In God We Trust on our coins, etc., thus, implementing the prior decisions through a reasonable approach to the problem. The Justices disagreed with Judge Ritter's findings of facts and found the presentation of the Ten Commandments monolith to the City by a non-religious organization was made for the primary purpose of youth guidance, and secondarily as a recognition that the origin of many of the laws governing individuals and institutions under federal, state and local law do have a

basis in laws compiled and instituted earlier albeit having some religious significance. This finding was substantiated by one of the Respondents who recognized the decalogue as at least a precedent legal code, Transcript P. 32, 33, and by the Encyclopaedia Britannica which recognizes the Decalogue as a statement of prior law:

> "The commandments themselves contain little that was new to the ancient world. Prohibition of other gods is parallel to the stipulation of the Hittite treaties that the vassel commits breach of covenants if he enters into a relationship with other kings. The prohibition of images of Yahweh has been found in Palestinian excavations and no certain references to such an image is found in the Old Testament. The vain use of the name of Yahweh is certainly a prohibition of false oaths. This like the rest of the commandments was common morality throughout the ancient near east. Disrespect for parents, murder, theft, adultery, false accusation, were in at least some respects punishable in most legal systems of which we have knowledge. The meaning and purpose of the sabbath at this early date is unknown, though there are possible similarities to the old Babylonian customs. 7 Encyclopaedia Britannica 153 (1968), transcript p. 59.

It states in a later paragraph:

> "The Decalogue was of no particular importance in Christian tradition until A.D. 1246 when it was for the first time incorporated into a manual of instruction for those coming to confession. The traditional division of the commandments into two 'tablets of duties' toward God and men made it possible to regard the second table as a succinct statement of the *'law of nature'* within the framework of medieval christian theology." 7 Encyclopaedia Britannica 153, 154 (1968), Transcript P. 59. (Emphasis Added).

The founding fathers also recognized this same prior law in the Declaration of Independence.

> "... and to assume among the powers of the earth the separate and equal stations to which *The Laws of Nature and of Nature's God* entitle them ..."

Respondents' statement that the Court has never before sanctioned a religious display whose purpose is religious, is correct. In this case, the purpose of the display of the Ten Commandments monolith is neither religious nor for the advancement or inhibition of other religions. The Supreme Court has allowed, by denial of certiorari, other structures to be erected which have a more specific religious Christian connotation and purpose, namely, two crosses. One was allowed in *Paul v. Dade County, Florida,* Fla., Ct. App. 202 S.2d 833, cert. denied, Fla. 207 S.2d 690, cert. denied, 390 U.S. 1041, and the second in *Meyer v. Oklahoma,* 496 P.2d 789 (Okla. 1972) cert. denied, 41 Law Week, 3253.

The Court of Appeals acknowledges that one of the declared purposes of the monolith was to inspire respect for the Law of God, but concluded that this was not the primary purpose or effect of the monolith:

> "We are brought to the conclusion that the monolith is primarily secular, and not religious in character; that neither its purpose or effect tends to establish religious belief." (App. page 21)

It is the Respondents' contention that this case is not distinguishable from the Paul and Meyers cases, supra. Symbols were displayed for a secular purpose and effect which also had secondary sectarian purpose and

effect but nevertheless were not a violation of the First Amendment.

II.

THE CONSTITUTION DOES NOT REQUIRE AN ABSOLUTE SEPARATION OF CHURCH AND STATE AND A WRIT OF CERTIORARI SHOULD NOT BE GRANTED MERELY BECAUSE AN ADMINISTRATIVE ACT OF A POLITICAL SUBDIVISION INVOLVES SOMETHING HAVING SECONDARY SECULAR SIGNIFICANCE.

Petitioners would have this Court rule that there must be an absolute separation of church and state, and they maintain that in such separation, anything religious should be barred by this court from any kind of support. This position is ridiculously untenable as is verified by Justice William O'Douglas's statement in the majority opinion of the case of *Zorack v. Clauson*, 343 U.S. 306, 313 (1952):

> "The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter. Otherwise, the state and religion would be aliens to each other—hostile, suspicious, and even unfriendly. Churches could not be required to pay even property taxes. Municipalities would not be permitted to render police or fire protection to religious groups. Policemen who helped parishioners into their places of worship would violate the Constitution. Prayers in our legislative halls; the appeals to the Almighty in the mes-

> sages of the Chief Executive; the proclamations making Thanksgiving Day a holiday; 'so help me God' in our courtroom oaths—these and all other *references to the Almighty that run through our laws*, our public rituals, our ceremonies would be flouting the First Amendment. A fastidious atheist or agnostic could even object to the supplication with which the Courts opens each session: 'God save the United States and this Honorable Court.'" (Emphasis Added) Zorach v. Clauson, (1952) 343 U.S. 306, 96 L. Ed. 954, 72 S.Ct. 679.

This is further buttressed by statements made by Justice Burger in *Lemon v. Kunzman*, supra., at Page 614. See also Griswold, "Absolute is in the Dark," a discussion of the approach of the Supreme Court to constitutional questions, 8 Utah Law Review, 167, 173-176 (1963).

Despite the foregoing, Petitioners would have this Honorable Court wipe out all references to religion in anything connected with this State or its subdivisions. If this were implemented, the agnostic or atheist would be placed in a superior position to those who espouse religion of some sort. At this point who is to say what is or is not religion. Some agnostics and atheists attack religion, or things, as here, they deem religious with as much fervor as any religious zealot. The Constitution does not dictate or require that those denying God be favored over those who avow the existence of God. The Constitution leaves room for as much tolerance by the agnostic and atheist for those who profess religion as it does for those who profess religion of their agnosticism and atheism.

The Ten Commandments, particularly the last seven, have had such an influence on our body of laws

today that even Petitioners do not deny it. It is this influence and not the alleged religious origin of the laws which should be the matter under consideration in this case. The Respondent City asserts that many of our laws today are based on these seven or some similar precedent legal code. The monolith is merly a monument recognizing one of the origins of these laws.

III.

THE WRIT SHOULD NOT BE GRANTED BECAUSE THERE IS NO CONFLICT BETWEEN THE CIRCUITS CONCERNING WHETHER "PURPOSE" AND "EFFECT" ARE QUESTIONS OF FACT OR LAW.

The Court of Appeals did not determine that the questions of "purpose" and "effect" were questions of law rather than fact, they merely disagreed with the conclusions the lower court judge drew from the facts presented, App. 14. There was no need for them to state the words "clearly erroneous" which Petitioners seem to assert are necessary to comply with Rule 52(a), Federal Rules of Civil Procedure. What is the difference when referring to findings of fact if the courts says the findings are "clearly erroneous" or "we cannot agree." Respondent City maintains there is none. There is nothing sacrosanct about the findings of fact of U.S. District Court Judge Willis W. Ritter, that prevents them from being reversed by the Court of Appeals. The only frightening aspect of the case is the consequences of Petitioners seeming assertions, that the findings of fact of a lower court cannot be overturned without using the magic of words.

CONCLUSION

For the foregoing reasons, Respondent Salt Lake City Corporation respectfully prays that the Petition for Writ of Certiorari of Alma F. Anderson, et al, be denied.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

OCTOBER TERM 1973

[Caption Omitted]

Before MURRAH, SETH and DOYLE, Circuit Judges. MURRAH, Circuit Judge.

The Board of Commissioners of Salt Lake City and Salt Lake County informally permitted the Fraternal Order of Eagles to erect on city-county courthouse grounds a permanent 3x5-foot granite monolith inscribed with a version of the Ten Commandments and certain other symbols representing the All Seeing Eye of God, the Star of David, the Order of Eagles, letters of the Hebraic alphabet, and Christ or peace. After erection of the monolith in a prominent place near the courthouse entrance, the Commissioners of the City formally authorized the installation and maintenance of lighting equipment to illuminate and enhance the display, at City and County expense. Similar monoliths have been erected in public places across the United States and Canada—nine of them in Utah—as part of the Eagles' established and continuing "youth guidance program," and ". . . to inspire all who pause to view them, with a renewed respect for the law of God, which is our greatest strength against the forces that threaten our way of life."

The plaintiffs, all residents and taxpayers of Salt Lake County, brought this suit seeking removal of the monolith and an injunction prohibiting the City and

County from permitting erection or maintenance of any similar monument on public land, alleging that the presence of the monolith is a violation of the Establishment Clause of the First Amendment, United States Constitution, and Article 1, Section 4, of the Utah Constitution.

Upon trial, the court held that the message conveyed by the monolith was "clearly religious in character"; that by their actions the Boards of Commissioners must be deemed to have adopted the program of the Order of Eagles, with the purpose and primary effect of advancing the cause of religion and certain religious concepts, thus inhibiting the ideas of persons with alternative beliefs, contrary to the prohibitions of the Establishment and Free Exercise Clauses of the First Amendment. Judgment was entered for the plaintiffs. We cannot agree, and, therefore, reverse the judgment.

The City and County challenge the standing of the plaintiffs to bring this suit, alleging lack of a proper nexus between plaintiffs' status and the alleged constitutional infringement, and failure to show any direct injury. But we think the requisite standing is clearly conferred by non-economic religious values when the plaintiffs assert a litigable interest under the Establishment and Free Exercise Clauses of the Federal Constitution. *E.g.*, Allen v. Hickel, 424 F.2d 944, 946 (D.C. Cir. 1970), citing Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 153 (1970), and Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608, 616 (2d Cir. 1965). We think the plaintiffs have standing based on their beliefs about religion to question whether those beliefs have been in-

fringed upon by an alleged use of public property for religious purposes.

We do not understand either the City or County to contend that the erection and maintenance of the monolith was not done under color of state law, in the constitutional sense in which the question is presented here for decision. *Cf.* Lowe v. City of Eugene, 254 Ore. 518, 463 P.2d 360 (1969), *cert. denied*, 397 U.S. 1042 (1970); Allen v. Hickel, *supra* at 947; and Everson v. Board of Education, 330 U.S. 1, 15-16 (1947). The City and County do invoke the abstention doctrine, contending that the federal court should have stayed its hand while the matter in issue is litigated in the state courts under the similar clauses of the state and federal constitutions. But this is not a case or circumstance calling for abstention of the exercise of federal jurisdiction. The right asserted here is a basic First Amendment right, of which the federal court has jurisdiction, and, although a like provision of the state constitution is involved, proper resolution of the federal right is not conditioned upon resolution of any state question, law, or constitution. *See, e.g.*, Lewis v. Kugler, 446 F.2d 1343 (3rd Cir. 1971); Zwickler v. Koota, 389 U.S. 241, 248 (1967), quoting Stapleton v. Mitchell, 60 F. Supp. 51, 55 (D.C. Kan. 1945); and Monroe v. Pape, 365 U.S. 167 (1961).

This brings us to the point of applying the Establishment Clause to the facts in this case. Surely nothing we can say at this time or place concerning the scope and effect of the Establishment Clause can serve to add to what has already been so prolifically said elsewhere. From Everson v. Board of Education, *supra*, to Lemon v. Kurtzman, 403 U.S. 602 (1971), the Supreme Court

has treated the Establishment and Free Exercise Clauses under various factual situations with perplexing diversity of views.[1] But throughout all these scholarly and authoritative writings runs a strain of consistency—one clear and distinct tenet of which we can be sure—the Constitution mandates complete government neutrality in religious matters. See, *e.g.*, Everson v. Board of Education, *supra*; and Abington School Dist. v. Schemp, 374 U.S. 203 (1963).

The government may not ". . . pass laws which aid one religion, aid all religions, or prefer one religion over another. . . ." Everson v. Board of Education, *supra* at 15. Nor can one cent of taxpayers' money be devoted to religious purposes. *E.g.*, Douglas, J., concurrence, Lemon v. Kurtzman, *supra* at 640, and Everson v. Board of Education, *supra* at 16.

In Lemon v. Kurtzman, *supra*, Chief Justice Burger reviewed and summarized the case history of the Establishment Clause. Said he, "[o]ur prior holdings do not call for total separation between church and state; total separation is not possible in an absolute sense. Some relationship between government and religious organizations is inevitable. . . . Judicial caveats against entanglement must recognize that the line of separation,

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[1]For example: In Everson v. Board of Education, 330 U.S. 1 (1947), Jackson and Rutledge, JJ., filed separate dissenting opinions; in Zorach v. Clauson, 343 U.S. 306 (1952), Black, Frankfurter and Jackson, JJ., each filed a separate dissenting opinion; in McGowan v. Maryland, 366 U.S. 420 (1961), Harlan, J., joined Frankfurter, J., in an 83-page dissenting opinion with two appendices; in Abington School Dist. v. Schemp, 374 U.S. 203 (1963), Douglas, Brennan and Goldberg, JJ., each concurred separately, while Steward, J., dissented; in Walz v. Tax Commission, 397 U.S. 664 (1970), Brennan, J., concurred specially, Harlan, J., wrote a separate opinion, and Douglas, J., dissented; and, in Lemon v. Kurtzman, 403 U.S .602 (1971), Black, J., joined Douglas, J., in a special concurrence, while Brennan and White, JJ., wrote separate opinions.

far from being a 'wall,' is a blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship." 403 U.S., at 614. Writing in the same case, Mr. Justice Brennan delineated pertinent standards in these words, "[w]hat the framers meant to foreclose, and what our decisions under the Establishment Clause have forbidden, are those involvements of religious with secular institutions which (a) serve the essentially religious activities of religious institutions; (b) employ the organs of government for essentially religious purposes; or (c) use essentially religious means to serve governmental ends, where secular means would suffice." 493 U.S., at 643, quoting Abington School Dist. v. Schemp, *supra* at 294-295 (concurring opinion), and Walz v. Tax Commission, 397 U.S. 664, 680-681 (1970) (concurring opinion). From all that has been said, "[t]he test may be stated as follows: what are the purpose and primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the constitution." *E.g.*, Abington School Dist. v. Schemp, *supra* at 222.

In applying this test, we must strike a balance between that which is primarily religious and that which is primarily secular, albeit embodying some religious impact. A tempered approach obviates the absurdity of striking down insubstantial and widely accepted references to the Diety in circumstances such as courtroom ceremony, oaths of public office, and on national currency and coin. *E.g.*, Allen v. Hickel, *supra* at 949. Overzealous rigidity may diminish or ultimately destroy the bulwark we have erected against governmental in-

terference in matters of religion. Walz v. Tax Commission, *supra* at 669. We know that "[t]he government may depict objects with a spiritual content, but is may not promote or give its stamp of approval to such spiritual content." Allen v. Hickel, *supra* at 948.

The decisions involving factual relationships more closely bearing upon our own case suffer from a lack of unanimity of reasoning and results. A brief reference to those cases serves to bring our case into constitutional focus. A string of lights in the form of a Latin Cross on the side of a courthouse was not a violation of the Establishment Clause because its primary purpose was found to be seasonal decoration of the downtown area for the benefit of business. *See* Paul v. Dade County, 202 So.2d 833 (Fla. App. 1967), *cert. denied*, 207 So. 2d 690 (Fla. 1967), *cert. denied*, 390 U.S. 1041 (1968). In Allen v. Hickel, *supra*, the plaintiffs objected to the annual erection of a creche on federal land, as part of a continuing seasonal pageant initiated in 1954. The trail court granted defendants' motion for summary judgment on grounds that the creche was only one of a group of symbols intended to represent the way Americans celebrate a particular holiday season. The Court of Appeals reasoned that the absence of evidence precluded determination of the "purpose and primary effect" of the creche, and accordingly remanded the case. Plaques were subsequently installed at the display explaining the secular purpose and history of the pageant. On remand the trial court recognized the religious significance of a nativity scene, but, in view of the additional secular significance of the creche in the over-all circumstances of the pageant, held that the religious effect was not sub-

stantial, hence the creche was not proscribed. *See* Allen v. Morton, 333 F.Supp. 1088 (D.C. 1971).

In another case involving issues similar to those we face here, Lowe v. City of Eugene, *supra*, the city issued permits for erection of a permanent cross in a municipal park. Despite contentions by the city that the cross was to be a war memorial and an attraction for local business, and that the erection did not involve public expense, the court ordered removal of the monument on grounds that the cross represented preferential treatment of particular religious ideas by the municipality. In another case, an Oklahoma City resident and taxpayer brought a suit seeking an injunction to prevent the city or its officials from maintaining a 50-foot-high Latin Cross at the municipal fairgrounds. The Supreme Court of Oklahoma, affirming unanimously the sustaining of defendant's general demurrer on grounds that the cross was displayed in a "secular environment" and displayed sectarian ideas only in a "most evanescent" manner, emphasized that the action was brought only under the Oklahoma Constitution, and did not involve a question of federal relief. Meyer v. Oklahoma City, 496 P.2d 789 (Okla. 1972), *cert. denied*, 41 L.W. 3253.

It is against this background that we determine the "purpose and primary effect" of the subject monolith. The exact origin of the Ten Commandments is uncertain,[2] but testimony in the record aids the supposition that a large portion of our population believes they are Bible based. Even so, an ecclesiastical background does not necessarily mean that the Decalogue is primarily re-

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[2]See, e.g., J. Stamm and M. Andrew, The Ten Commandments In Recent Research 22-28, et seq. (2 ed. 1962).

ligious in character—it also has substantial secular attributes. Indeed, one of the plaintiffs in our case, a lawyer, admitted while testifying that, ". . . the Ten Commandments is an affirmation of at least a precedent legal code."

Although one of the declared purposes of the monolith was to inspire respect for the law of God, yet at the same time secular purposes were also emphasized. It is noteworthy that the Order of the Eagles is not a religious organization—it is a fraternal order which advocates ecclesiastical law as the temporal foundation on which all law is based, but this creed does not include any element of coercion concerning these beliefs, unless one considers it coercive to look upon the Ten Commandments. (Although they are in plain view, no one is required to read or recite them. *Cf., e.g.*, Cohen v. State of California, 403 U.S. 15 (1971).)

So the Decalogue is at once religious and secular, as, indeed, one would expect, considering the role of religion in our traditions. After all, "[w]e are a religious people whose institutions presuppose a Supreme Being." Zorach v. Clauson, 343 U.S. 306, 313 (1952). "It can be truly said, therefore, that today, as in the beginning, our national life reflects a religious people who, in the words of Madison, are 'earnestly praying, as . . . in duty bound, that the Supreme Lawgiver of the Universe . . . guide them into every measure which may be worthy of his [blessing . . .].'" Abington School Dist. v. Schemp, *supra* at 213, quoting Memorial and Remonstrance Against Religious Assessments, as cited in Everson v. Board of Education, *supra* at 71-72 (Appendix to dissenting opinion). "The history of man is inseparable

from the history of religion." *See* Engel v. Vitale, 370 U.S. 421, 434 (1962).

It does not seem reasonable to require removal of a passive monument, involving no compulsion, because its accepted precepts, as a foundation for law, reflect the religious nature of an ancient era. *See e.g.*, Griswold, Absolute is in the Dark—A Discussion of the Approach of the Supreme Court to Constitutional Questions, 8 Utah Law Rev. 167, 173-176 (1963). The wholesome neutrality guaranteed by the Establishment and Free Exercise Clauses does not dictate obliteration of all our religious traditions. *See, e.g.*, Griswold, *supra*. Although an accompanying plaque explaining the secular significance of the Ten Commandments would be appropriate in a constitutional sense, we cannot say that the monument, as it stands, is more than a depiction of a historically important monument with both secular and sectarian effects.

No one can be the judge of his own objectivity. It may well be that in this blurred, indistinct area of our national life and environment, opinions about the purpose and effect of the monolith are influenced by orthodox or unorthodox propensities. But be that as it may, we are brought to the conclusion that the monolith is primarily secular, and not religious in character; that neither its purpose or effect tends to establish religious belief.

The judgment of the District Court is, accordingly, reversed.